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September 9, 2000

Via Hand Delivery

Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: In the Matter of Annual Assessment of the Status of Competition in Market for the Delivery of Video Programming CS Docket No. 00-132

Dear Ms. Salas:

Enclosed please find for filing an original and five (5) copies of the Comments of Fox Television Stations, Inc. in the above-captioned proceeding. Per the Commission's instructions, diskette copies of the comments are being sent to Wanda Hardy and International Transcription Service ("ITS").

Please date stamp this letter and the two other copies provided and return it to the messenger. Should you have any questions regarding the enclosed, please contact the undersigned.

Respectfully submitted,

Christopher J. Harvie

Enclosures

cc: Service List
Wanda Hardy
International Transcription Service

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Annual Assessment of the Status of Competition in Market for the Delivery of Video Programming	)))	CS Docket No. 00-132

COMMENTS OF FOX TELEVISION STATIONS, INC.

Fox Television Stations, Inc. ("Fox") hereby submits its comments to the Notice of Inquiry in the above-captioned proceeding.[1/]

INTRODUCTION AND SUMMARY

In the last year, the trend toward increasing competition, diversity and consumer choice in the video programming marketplace continued unabated. The contrast between the dynamism and vigor of today's video programming marketplace and the market conditions that prevailed during the nascency of television more than fifty years ago could not be starker. Where consumers once were limited to the programming offerings furnished by the three major television networks, they can today obtain hundreds of video programming channels from an array of different providers and outlets, including cable television, direct broadcast satellite, wireless provider, telephone companies, new competitive broadband service providers, and the Internet. Whatever risks to competition and diversity that may have been present in a world with only three major television networks have long since vanished.

1/ *In the Matter of Annual Assessment of the Status of Competition in market for the Delivery of Video Programming, Notice of Inquiry*, CS Docket No. 00-132, FCC 00-270 (rel. Aug. 1, 2000) ("Notice").

While the television marketplace has changed dramatically in just the last year, let alone the last fifty years, the Commission's regulatory framework still contains many rules that are predicated upon an archaic vision of the market that bears no resemblance to today's competitive realities. Broadcasters face competition not just from one another, but also from major players in the cable, DBS, online services, telephone and broadband services businesses. The intensifying competition faced by broadcasters from a plethora of new entrants in the video programming business has put downward pressure on broadcasters' share of viewership and advertising revenue, while putting upward pressure on programming costs. Yet broadcasters continue to be subject to outmoded limitations that fail to take account of this competition and result in a siphoning of new programming investment away from free over-the-air television. While the Commission has, within the last year, taken some steps to relax some these restrictions, those efforts must be accelerated and broadened in order to conform its regulatory framework more closely to the competitive realities of today's video programming marketplace.

I. THE BREADTH AND VIGOR OF COMPETITION IN VIDEO PROGRAMMING HAS GROWN SUBSTANTIALLY IN THE LAST YEAR

The video programming marketplace of today provides viewers, advertisers and program suppliers with an unprecedented level of choice, diversity and competition. Today's video programming business bears no resemblance to the marketplace structure that prevailed during the television's nascency in the 1940s and 1950s. Consumers today can chose from an expansive range of broadcast networks, an extensive variety of multichannel video providers, including cable, DBS, internet, telephone companies, electric utilities and new competitive broadband services providers. Professor Michael Katz of the University of California at Berkeley (and former Chief Economist at the Commission) has noted that, as a result of the proliferation of new players in the video programming business, "the past two decades have witnessed a sharp increase in competition faced by television stations and networks for viewers, for advertisers, and for programming."[2/] The powerful competitive trends that have been putting downward pressure on broadcasters' share of viewership and advertising revenue over the last two decades, while placing upward pressure on programming costs, have continued unabated over the last year. And the emergence of the Internet and the PC as new mechanisms for distributing and receiving video programming portend additional audience and revenue dilution for existing video programmers.

Presently, there are over 100 million U.S. households served by an array of broadcast video outlets including: 1,242 commercial TV stations; 373 non-commercial, educational TV stations; and over 2,100 low power television stations.[3/] The average U.S. household can receive 13 over-the-air television stations.[4/] Thirty-six percent of all homes can receive 15 or more stations over the air while 9 percent can receive twenty or more.[5/] This explosion in broadcast choice should only expand as new technologies such as digital television are implemented.[6/]

2/ Michael L. Katz, *Old Rules and New Rivals: An Examination of Broadcast Television Regulation and Competition* (Sept. 1999) ("Katz Study") at 11. The Katz Study, and a supplemental study prepared by Dr. Katz, entitled *A Comparative Analysis of the Broadcast Television National Multiple Ownership Rule and Cable Horizontal Ownership Rules*, (Nov. 18 1999) ("Katz Comparative Analysis) were included as part of the record in the 1998 Biennial Review of the Commission's Broadcast Ownership Rules. For ease of reference, Fox has attached the Katz Study to these comments as Exhibit 1 and the Katz Comparative Analysis as Exhibit 2 .

3/ *In the Matter of 1998 Biennial Review -- Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Biennial Review Report*, MM Docket No. 98-35, FCC 00-191 (rel. June 20, 2000) ("2000 Biennial Review") ¶ 9.

4/ *Id.*

5/ *Id.*

6/ *See In the Matter of Amendment of Section 73.658(g) of the Commission's Rules -- The Dual Network Rule, Notice of Proposed Rulemaking*, MM Docket No. 00-108, FC 00-213 (rel. June

More than eight out of ten American households receive their television programming from a non-broadcast multichannel video programming distributor (MVPD).[7/] The cable industry itself has attained 66 percent penetration.[8/] Ninety-eight percent of cable subscribers receive at least thirty channels, while almost two thirds (64 percent) have access to at least 54 channels.[9/] There are more than 170 national cable-programming networks and at least 50 regional networks.[10/] Industry data estimates that the number of cable networks has grown by 146 percent over the past seven years.[11/] Moreover, basic cable's viewing share for all American television households has increased by nearly 87 percent since the 1991/92 season and constituted almost 45 percent of viewing during the 1998/99 season.[12/]

Despite this impressive growth, however, cable is only one of many multichannel video-programming providers serving a total of almost 84 million consumers as of December 1999.[13/] While cable providers served approximately 81 percent of the MVPD market by the end of 1999, the provider with the most rapid growth during the same period was direct broadcast satellite

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20, 2000) ¶ 25 (suggesting that the competitive effect of digital television will profoundly affect scarcity concerns).

7/ *In the Matter of Annual Assessment of Competition in the Markets for the Delivery of Video Programming, Sixth Annual Report,* CS Docket No. 99-230, FCC 99-418 (rel. Jan. 14, 2000) ("Sixth Annual Report") ¶ 6.

8/ *2000 Biennial Review* at ¶ 10.

9/ *Id.* ¶ 10.

10/ *Id.*

11/ National Cable Television Association, *Cable Television Industry Overview 2000* (visited Sept. 7, 2000) http://www.ncta.com/glance.html., at 4.

12/ *Id.* at 5.

13/ *Id.* at 2.

(DBS) service which received 65.3 percent of new MVPD subscribers.[14/] As of December 1999, DBS served 11.4 million subscribers (almost 14 percent of the MVPD market).[15/]

Broadcasters, incumbent cable operators, and DBS providers face further competition from an array of new multi-service broadband providers offering video programming, such as RCN, Knology and Wide Open West.[16/] Moreover, incumbent telephone companies such as BellSouth, Ameritech, and Verizon continue to offer customers an additional source of competing multichannel video programming service.[17/]

[14/] *Id.* at 2-3.

[15/] *Id.* at 2.

[16/] *See "RCN Gets Go Ahead to Bring San Francisco Residents Their First Choice in Residential Telecom Services in Decades,"* Press Release (Aug. 28, 2000), http://www.rcn.com/investor/press/08-00/08-28-00/index.html (noting that RCN offers or will offer bundled cable, telephone and high-speed data services to communities and surrounding suburbs of Los Angeles, San Francisco, Chicago, New York, Boston, Washington, D.C. and Philadelphia); Knology Cities, http://www.knology.com/cities/index.cfm (visited Sept. 8, 2000) (noting that Knology provides or will provide interactive video, voice and data services throughout the Southeast, including communities in Georgia, Alabama, South Carolina, Florida, Tennessee and Kentucky); Joe Estrella, *Wide Open West Aims at AT&T Bastion*, Multichannel News, July 10, 2000 (noting that Wide Open West offers or will offer video, high-speed Internet access, and telephone service in communities such as St. Louis, Denver, Dallas, Portland, Seattle, and Minneapolis-St. Paul).

[17/] *See "BellSouth Announces Major Home Entertainment Initiative, Building an Even Bigger Bundle of Services,"* Press Release (May 9, 2000) http://www.bellsouthcorp.com/proactive/documents/render/32702.vtml (noting that BellSouth currently provides home entertainment service consisting of 160 channels of programming to 120,000 customers in 11 states); *"DirecTV Service from Verizon Entertainment,"* http://www.bavsatellitetv.com/index.html (visited Sept. 8, 2000) (noting offering by Verizon of DirecTV service in Washington, D.C. area and portions of Virginia, Maryland, Pennsylvania, New Jersey, New York, Rhode Island, and Massachusetts).

Video streaming over the Internet is beginning to emerge as another new outlet for the provision of video programming.[18] In 1999, fifty percent of households owned a PC and over 100 million Americans used the Internet.[19] Between May and October of 1999, streaming video sent over the Internet grew by 299 percent compared to the preceding six months.[20] The growth potential for this medium is vividly demonstrated by the experience of RealNetworks, producer of RealPlayer audio and video streaming delivery platforms, whose registered users grew from 500,000 in 1995 to 95 million by February of 2000.[21] RealPlayer technology is being downloaded at a rate of five times a second.[22] Because of partnerships with more than 300 content providers (including a wide variety of broadcast, cable, and radio networks), more than 300,000 hours of programming are webcast through RealPlayer technology alone.[23]

New players such as WaveExpress, Pinnacle Systems, Ravisent, Broadlogic and DecisionMark -- along with established companies such as Microsoft and Intel -- are rapidly developing technologies and services that enable PC users to obtain digital television

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[18] *See* Marc Gunther and Irene Gashurov, *When Technology Attacks: Your TV Is Looking Weird, Network Executives Are Getting Flustered, Viewing Choices Are Exploding. That's What Happens. . . .*, Fortune, Mar. 6, 2000.

[19] 2000 *Biennial Review* at ¶ 11.

[20] Andy Patrizzo, *Streaming Media; Online Training, Cost-cutting, and More -- Technology Offers Content, Audio and Video, and Lets Businesses Get to Market Quickly*, Information Week, Aug. 14, 2000.

[21] *Video on the Internet, Hearing Before the Subcomm. On Telecommunications Trade and Consumer Protection of the House Commerce Comm.* (Feb. 16, 2000) (prepared testimony of Alec Alben, Vice President of Government Affairs for RealNetworks Telecommunications).

[22] *Id.*

[23] *Id.*

programming.[24/] The imminent prospect of the Internet and the PC becoming additional outlets and devices for the provision and reception of video programming will result in an exponential expansion of choices for consumers.[25/]

The effect of this new competition on broadcasters has been dramatic, and underscores just how stale the rationales for the Commission's continuing restrictions have become.[26/] Over the years, the collective prime time ratings of ABC, NBC and CBS have fallen by more than half, from 75 percent to 28.3 percent.[27/] Even if Fox is included, the total ratings for the "big four" in the 1997-98 season were only 35.3.[28/] Losses of an additional 14 percent of audience share are projected for the period covering 1999-2003.[29/]

Likewise, the broadcast networks' share of overall television advertising revenue has declined or remained essentially flat every year for the last twenty years, dropping from 44

24/ *See, e.g., Bringing Affordable Digital Television and the Next Generation of High Bandwidth Connectivity to the Home, Members from the Computer and Datacasting industries join together to promote digital broadcast technology for the PC,* Press Release (Aug. 21, 2000), http://www.pcdtv.org/PCDTV/press/ (announcing establishment by Intel, Microsoft, WaveExpress, Santa Barbara Software, Ravisent and nine other companies of the PC DTV Promoters Group aimed "at marketing and accelerating adoption of digital broadcast receivers and DTV technology for the PC").

25/ *See* Marc Gunther and Irene Gashurov, *When Technology Attacks: Your TV Is Looking Weird, Network Executives Are Getting Flustered, Viewing Choices Are Exploding. That's What Happens. . . .*, Fortune, Mar. 6, 2000.

26/ *See generally* Katz Study at 11-52, 60-69.

27/ Katz Study at 11, citing Paul Kagan Associates, *The Economics of TV Programming and Syndication*, 1999, at 21-22.

28/ *See id.*

29/ *Notebooks*, Television Digest, Vol. 39, Issue 16 (April 19, 1999) (citing a study by the Yankee Group).

percent in 1980 to 27 percent in 1999.[30/] With respect to total advertising dollars (including cable, radio, print media, yellow pages), broadcast network advertising revenue was the only one of out of twenty categories of advertising revenue to decline in 1997.[31/] Modest gains in broadcast network advertising revenue in 1998 and 1999 were dwarfed by advertising revenue growth for other media outlets. In 1999, when total advertising revenues rose 6.8 percent, broadcast network revenues increased only 1.6 percent.[32/]

Although cable has successfully attracted a substantial amount of broadcast viewers and advertising dollars over recent years, it is apparent that cable itself now faces serious competition from newer distribution channels. For instance, cable network advertising revenues climbed 25 percent in 1999, and its growth in new subscribership far outpaced that of cable.[33/] Similarly, Internet advertising enjoyed an 85 percent increase and, as discussed above, its use as a video programming source is expected to grow rapidly.[34/]

While the increased competition described herein has put downward pressure on broadcasters' share of both viewership and advertising revenue, it places upward pressure on

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[30/] Television Bureau of Advertising, *Trends in Television, Television Advertising Volume* (visited Sept. 8, 2000) http://www.tvb.org/tvfacts/trends/tv/advolume.html.

[31/] Television Bureau of Advertising, *Trends in Advertising Volume, Estimated Annual U.S. Advertising Expenditures, 1995*-97 (visited Sept. 8, 2000) http://www.tvb.org/tvfacts/trends/advolume/1995_1997.html.

[32/] Television Bureau of Advertising, *Trends in Advertising Volume*, *Estimated Annual U.S. Advertising Expenditures 1998-1999* (visited Sept. 8, 2000) http://www.tvb.org/tvfacts/trends/advolume/1998_1999.html.

[33/] National Cable Television Association, *Cable Television Industry Overview 2000* http://www.ncta.com/glance.html.

[34/] *Id.*

programming costs, since there are more programmers and outlets bidding for content.[35] Notwithstanding the fragmentation of viewership fostered by the proliferation of new video programming choices available today, advertisers continue to expect network broadcasters to deliver mass audiences.[36] In order to accomplish that result, networks must emphasize premium or event programming such as professional sporting events, recently-released motion pictures, and awards shows.[37] Such programming has become increasingly expensive to produce, as a larger number of networks and cable outlets bid for the limited supply of programming capable of attracting a mass audience.

In short, broadcasters face upward pressure on the input costs they pay to program suppliers while simultaneously experiencing a declining share of advertising revenue due to audience erosion. The resulting squeeze inevitably has an adverse affect on broadcasters' ability to continue to invest in and provide high-quality programming, while spurring a disproportionate shift in investment to subscriber-based alternatives. In fashioning its regulatory rules and policies for video programming, the Commission must take full account of the impact that the accelerating competition and changing market dynamics described here have on the future vitality and viability of free over-the-air television.

[35/] Katz Study at 32-34.

[36/] *Id.* at 24.

[37/] *See id.* at 32-33.

CONCLUSION

The accelerating trend toward increased competition and choice among both programming channels and distribution outlets in the video programming business has continued unabated in the last year. The Commission should take full account of this accelerating trend in assessing the continued utility of regulations and policies applicable to broadcasters and other providers of video programming.

Respectfully submitted,

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